

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



May 5, 2004

Agenda ID #3533
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 01-10-011

This is the draft decision of Administrative Law Judge (ALJ) Wong. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN by LTC
Angela K. Minkin, Chief
Administrative Law Judge

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Attachment

Decision **DRAFT DECISION OF ALJ WONG** (Mailed 5/5/2004)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company
Proposing a Market Structure and Rules for the
Northern California Natural Gas Industry for the
Period Beginning January 1, 2003 as Required by
Commission Decision 01-09-016. (U 39 G)

Application 01-10-011
(Filed October 9, 2001)

**OPINION REGARDING THE SMALL COGENERATION
CONSORTIUM'S PETITION TO MODIFY DECISION 03-12-061****I. Summary**

On February 27, 2004, the Small Cogeneration Consortium (SCC) filed a petition to modify Decision (D.) 03-12-061, the decision which addressed the gas market structure for Pacific Gas and Electric Company (PG&E) for 2004 and 2005.

Today's decision grants SCC's petition to modify D.03-12-061 by modifying the paragraph that addresses an electric generation customer's procurement of gas from a third-party supplier.

II. Background

The SCC is an ad hoc group made up of small distributed generation customers, manufacturers, consulting engineers, and installers. According to SCC's petition, its members did not participate in this proceeding prior to the filing of its petition because they were unaware of the existence of this proceeding, or its implications. SCC also states that the specific issue it seeks to modify was not an issue until after the final decision was adopted by the Commission.

SCC seeks to modify D.03-12-061 in two ways. First, D.03-12-061 imposed the requirement that electric generation customers procure their own gas from a third-party supplier. (D.03-12-061, p. 372.) PG&E reflected that requirement in Advice Letter 2514-G, which it filed on January 20, 2004.

SCC's second concern "with the decision and PG&E's Advice Letter ... is PG&E's new requirement that all future projects install separate gas metering." (SCC Petition, p. 5.)

PG&E was the only party to file a response to SCC's petition. PG&E's response was filed on March 29, 2004.

III. Positions of the Parties

A. SCC

SCC seeks to modify the following paragraph which appears at page 372 of D.03-12-061:

"We will eliminate the 250,000 therm cutoff from PG&E's proposal, but retain the proposed requirement that these customers obtain their gas from a third-party supplier."

SCC contends that this new requirement for self-procurement is a dramatic departure from past practice and a harmful change for small cogeneration customers. SCC points out that small cogenerators use between 30,000 to 150,000 therms of gas per year. Due to their small size and gas usage, these "small users typically lack the legal staff, rate expertise, and sophistication needed to arrange and protect their interests in complex third-party gas procurement transactions," and that "the low volumes are most likely going to be too small to be of much interest to third-party gas marketers." (SCC Petition, pp. 3-4.)

SCC asserts that if the self-procurement requirement is not modified, that “small DG [distributed generation] users would be hit with high fees, transaction costs, and risks arranging their own procurement deals.” Since such a requirement will be a burden on small DG projects, existing and future small users will forego the electric generation rate and revert to a full core service rate schedule. SCC contends that this “is not what the SCC members thought was going to happen, nor what the SCC members suggest the Commission intends.” (SCC Petition, p. 4.)

SCC recommends that the language adopted in D.03-12-061 be replaced with the following:

“We will eliminate the 250,000 therm cutoff from PG&E’s proposal, and retain the right for customers that are otherwise core to receive core procurement under their otherwise applicable retail rate schedule (unless they elect core aggregation services). However, if a small DG user’s electric generation usage exceeds 250,000 therm per year, it shall be required to obtain their gas from a third-party supplier.” (SCC Petition, p. 5.)

The second concern of SCC “with the decision and PG&E’s Advice Letter ... is PG&E’s new requirement that all future projects install separate gas metering.” (SCC Petition, p. 5.) SCC’s petition, however, does not reference the language in D.03-12-061 or the PG&E Advice Letter where such a requirement appears.

B. PG&E

PG&E agrees with SCC’s petition that the Commission should permit small cogenerators, i.e., those with a rated generation capacity of less than 500 kW and total gas usage of 250,000 therms per year or less, the option of purchasing their gas supplies from PG&E as core customers.

Under PG&E's G-COG tariff, small cogenerators are able to obtain cogeneration gas transportation rates, and are permitted to purchase their natural gas supplies from PG&E as core customers. D.03-12-061 alters the status quo by requiring small cogenerators to obtain their gas from third-party suppliers.

PG&E asserts that SCC's petition, and the protests to PG&E's Advice Letter 2514-G, make it clear "that these small cogeneration customers highly value the natural gas procurement services PG&E has provided them over the years," and "that most of these small cogeneration systems would never have been installed (and would not be economical), but for the discounted gas transportation rate." (PG&E Response, p. 3.)

PG&E points out that many of these small cogeneration systems have been installed at health clubs, schools, retirement homes, office buildings, and similar facilities. These customers have traditionally been classified as core customers because of their size, or their need for hot water or heating. PG&E asserts that "Most of these customers would be unwilling or unable to curtail gas use, and they also lack the resources or desire to negotiate gas supply contracts with third party suppliers." (PG&E Response, p. 3.)

For the reasons listed above, PG&E supports SCC's petition to eliminate the self-procurement requirement imposed by D.03-12-061, and that smaller cogeneration be given the option of taking core procurement service. PG&E also recommends that SCC's proposed change be slightly modified as follows, to

reflect the current noncore definition for electric generation contained in D.03-12-008:¹

“We will eliminate the 250,000 therm cutoff from PG&E’s proposal, and retain the right for customers that are otherwise core to receive core procurement under their otherwise applicable retail rate schedule (unless they elect core aggregation services). However, if a small DG user’s electric generation has a rated generation capacity of five-hundred kilowatts (500 kW) or larger, or with annual usage that exceeds 250,000 therms per year it shall be required to obtain their [sic] gas from a noncore third-party supplier.”

If the above language change is adopted, PG&E states that it will “provide all small cogeneration customers that fall below the size limit the option to elect core procurement service in conjunction with noncore transportation service under schedule G-EG.” (PG&E Response, p. 5.)

With respect to SCC’s second concern concerning the separate metering requirement, PG&E states that it eliminated this requirement in PG&E’s Advice Letter 2514-G-A, which was filed after SCC filed its petition, and after Advice Letter 2514-G was filed. As a result, PG&E states that SCC’s request to eliminate the separate metering requirement can be dismissed as moot. PG&E also states in its response that SCC has authorized PG&E to represent that SCC agrees that this issue has been resolved and need not be considered further by the Commission.

¹ PG&E states at pages 2 and 5 of its response that SCC has authorized PG&E to represent that SCC agrees with PG&E’s additional language modifications.

IV. Discussion

We first note that although SCC was not a party to this proceeding, Rule 47 of the Commission's Rules of Practice and Procedure provides that the "petitioner will become a party to the proceeding for the purpose of resolving the petition" if the petition states "specifically how the petitioner is affected by the decision and why the petitioner did not participate in the proceeding earlier." SCC included that information in its petition, and SCC shall be considered a party for the purpose of resolving its petition.

The first modification that SCC seeks is to modify the requirement that all electric generation customers, including small cogeneration, obtain their gas from a third-party supplier. PG&E agrees with SCC's proposed modification, with some slight changes that SCC agrees with. No other party expressed interest in this issue.

SCC's reasoning for modifying the self-procurement requirement is to lessen the administrative and financial burden on small cogenerators. If the self-procurement requirement is retained, SCC warns that the cost of procuring gas for these small cogenerators will outweigh the benefit of the lower transportation rate.

After considering the concerns of SCC, and PG&E's support of SCC's request, SCC's petition should be granted, and the following paragraph that appears at page 372 of D.03-12-061 should be modified:

"We have considered PG&E's proposal, and the concerns of DGS. We will eliminate the 250,000 therm cutoff from PG&E's proposal, but retain the proposed requirement that these customers obtain their gas from a third-party supplier."

The paragraph should be modified as follows, and adopted:

“We have considered PG&E’s proposal, and the concerns of DGS. We will eliminate the 250,000 therm cutoff from PG&E’s proposal, and retain the right for customers that are otherwise core to receive core procurement under their otherwise applicable retail rate schedule (unless they elect core aggregation services). However, if a small DG user’s electric generation has a rated generation capacity of five-hundred kilowatts (500 kW) or larger, or with annual usage that exceeds 250,000 therms per year, it shall be required to obtain its gas from a noncore third-party supplier.”

The second issue that SCC is concerned about is the separate metering requirement. The separate metering recommendation was part of PG&E’s proposal for a single electric generation class that it made in this proceeding. Under its proposal, PG&E had recommended “that all customers who qualify for the electric generation rate have a separate PG&E meter installed to measure gas use of the electric generation facilities, and that those facilities be monitored on a regular basis.” (D.03-12-061, pp. 246-248.) D.03-12-061 adopted PG&E’s proposal for a single electric generation customer class, as revised by the discussion in the decision. (D.03-12-061, pp. 375-376.) As part of the discussion, we stated that “Instead of PG&E’s proposed method of measuring usage, the method set forth in SoCalGas’ [Southern California Gas Company] Schedule GT-F tariff in Special Conditions 19 through 22 shall be used.” (D.03-12-061, pp. 374, 458, COL 76.) Special Condition 22 of SoCalGas’ Schedule GT-F provides: “All electric generation customers receiving service at the electric generation transmission rate shall be separately metered unless it can be demonstrated that a separate meter is not economically feasible.” (See Ex. 6, p. 48, Att. RTB-4.)

PG&E’s Advice Letter 2514-G did not include the exception to the separate metering requirement, i.e., that a separate meter is not required if it can be

demonstrated that it is not economically feasible. On March 5, 2004, PG&E filed Advice Letter 2514-G-A to reflect the Commission's Energy Division request that:

“PG&E insert language into the Meter Requirement section of revised Schedule G-EG to clarify that, ‘All electric generation load served under this schedule shall be separately metered using a PG&E-owned and installed gas meter, unless it can be demonstrated that it is not economically feasible....’ ” (PG&E Advice Letter 2514-G-A, p. 1, original emphasis.)

Since PG&E made this change to Schedule G-EG, which became effective on April 1, 2004, the second concern that SCC raised in its petition to modify D.03-12-061 is now moot and no further Commission action is needed.

V. Comments on Draft Decision

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with § 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and procedure. Comments were filed on _____, and reply comments were filed on _____.

VI. Assignment of Proceeding

Loretta M. Lynch is the assigned Commissioner, and John S. Wong is the assigned ALJ in this proceeding.

Findings of Fact

1. SCC seeks to modify D.03-12-061 by modifying the requirement that electric generation customers procure their own gas from a third-party supplier, and the requirement in PG&E's Advice Letter 2514-G that separate gas meters be installed.
2. PG&E was the only party that filed a response to SCC's petition.
3. SCC has authorized PG&E to represent that SCC agrees with PG&E's additional language modifications to the paragraph which SCC seeks to modify.

4. The concerns of SCC, and PG&E's support of SCC's petition to modify the self-procurement requirement, justify modifying the paragraph that appears at page 372 of D.03-12-061.

5. PG&E's Advice Letter 2514-G did not include the "economically feasible" language which D.03-12-061 specified should be used.

6. PG&E's Advice Letter 2514-G-A included the "economically feasible" language as part of Schedule G-EG, which went into effect on April 1, 2004.

Conclusions of Law

1. SCC shall be considered a party to this proceeding for the purpose of resolving its petition.

2. SCC's petition to modify the self-procurement requirement should be granted.

3. The paragraph that appears at page 372 of D.03-12-061 should be modified as suggested by PG&E, and adopted.

4. Since PG&E included the "economically feasible" language as part of Schedule G-EG, the second concern that SCC raised in its petition is now moot and no further Commission action is needed.

O R D E R

IT IS ORDERED that the February 27, 2004 petition of the Small Cogeneration Consortium to modify Decision (D.) 03-12-061 is granted as set forth below:

- a. The following paragraph that appears at page 372 of D.03-12-061 shall be deleted:

"We have considered PG&E's proposal, and the concerns of DGS. We will eliminate the 250,000 therm cutoff from

PG&E's proposal, but retain the proposed requirement that these customers obtain their gas from a third-party supplier."

- b. The above-quoted paragraph shall be modified as follows, and shall replace the deleted paragraph at page 372 of D.03-12-061:

“We have considered PG&E’s proposal, and the concerns of DGS. We will eliminate the 250,000 therm cutoff from PG&E’s proposal, and retain the right for customers that are otherwise core to receive core procurement under their otherwise applicable retail rate schedule (unless they elect core aggregation services). However, if a small DG user’s electric generation has a rated generation capacity of five-hundred kilowatts (500 kW) or larger, or with annual usage that exceeds 250,000 therms per year, it shall be required to obtain its gas from a noncore third-party supplier.”

This order is effective today.

Dated _____, at San Francisco, California.